

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON ENERGY AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN MACK COLE**, on January 30, 2001 at 3:15 P.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. Mack Cole, Chairman (R)
Sen. Royal Johnson, Vice Chairman (R)
Sen. Steve Doherty (D)
Sen. Alvin Ellis Jr. (R)
Sen. Mike Halligan (D)
Sen. Bea McCarthy (D)
Sen. Don Ryan (D)
Sen. Corey Stapleton (R)
Sen. Mike Taylor (R)
Sen. Tom Zook (R)

Members Excused: Sen. Walter McNutt (R)

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Misti Pilster, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 327, 1/26/2001; HB 84,
1/26/2001
Executive Action: SB 250; SB 276

HEARING ON SB 327

Sponsor: SENATOR STEVE DOHERTY, SD 24, Great Falls

Proponents: Jay Preston, Ronan Telephone
Loy Fraser, Internet Connect Services
Russ Cravens, Qwest

**Riley Johnson, National Federation of Independent
Business**

Michael Long, aboutmontana.net

Joseph Kimmet, Moose Brothers Printing and Graphics

Bill Squires, Montana Telecommunications Assn.

John Fitzpatrick, Touch America

Shawn Whyte, Taliant

Fred Weber, Montana Sky Network

Opponents: None

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 1}

SENATOR STEVE DOHERTY, SD 24, Great Falls, stated the purpose of the bill is to restrict agency and political subdivision competition with for-profit internet service providers (ISP). Constituents should be able to get the cheapest services no matter where or what it is or who is providing that service. There are instances in which the public needs to be very cognizant of the role the government plays, especially when providing services to constituents. When there is competition between the government and private industry providing service, there ought to be a policy decision to step back and allow the market to work.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 3}

Jay Preston, Ronan Telephone, proclaimed that competitive internet services are alive and well in rural western Montana. There are two or more internet service providers that provide service in Ronan, Polson, St. Ignatius, Charlo, Arlee, Seeley Lake, Plains, Thompson Falls, Kalispell, and Missoula. His firm also has a community based domain name reserved for practically every rural community with more than 500 people and they hope to expand their service. This bill is definitely a step in the right direction. Government is best served to leave the internet alone and allow it to continue to grow and evolve. If this happens, the local companies will provide services to both the rural and urban areas.

Loy Fraser, Internet Connect Services, reported that his group was for the bill. They stand in opposition to the use of public facilities in order to directly compete with internet service providers that are available where the competitive advantage is gained by that entity.

Russ Cravens, Qwest, declared his support of the bill.

Riley Johnson, National Federation of Independent Business, cited his organization has supported the privatization of governmental services, otherwise known as the prohibiting of governmental interference with a private enterprise, for at least two decades. This is an excellent opportunity to address that issue of government competition with private enterprise. He addressed the issue of university systems packaging and reselling internet services to students.

Michael Long, aboutmontana.net, strongly supported this bill.

Joseph Kimmet, Moose Brothers Printing and Graphics, noted he had dealt with a government run internet service provider and the quality was poor, which caused company problems.

Bill Squires, Montana Telecommunications Assn., submitted written testimony and amendments, **EXHIBIT(ens24a01)**.

John Fitzpatrick, Touch America, articulated that his group supported the legislation, as well as the amendments offered by the Montana Telecommunications Assn.

Shawn Whyte, Taliant, professed her support of the bill and its efforts to encourage information technology growth in Montana. This growth will help the economic development in the state. Keeping internet service providers private will allow for rapid absorption of new technological advances in this area and others.

Fred Weber, Montana Sky Network, submitted written testimony, **EXHIBIT(ens24a02)**.

Opponents' Testimony: None

Informational Testimony:

Tony Herbert, Department of Administration, indicated the bill is a good idea for clarification of some issues. He had discussed, with the sponsor, section 3 which talks about state agencies inability to provide internet services. He believed the intent of that section is to not have agencies provide access to the internet and hoped that could be cleared up by the committee.

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 24}

SENATOR MIKE TAYLOR asked whether the bill addresses the issue of a business requiring fast internet service in a small community with an extremely high cost. **SENATOR DOHERTY** stated that under the language of the bill, if service isn't being provided, perhaps the government could step in and provide assistance to make that happen. **SENATOR TAYLOR** said that some infrastructure might need to be included in the bill as governmental entities.

SENATOR TAYLOR inquired whether this bill would hinder gathering information as government expands across the state and as consumers go to web pages for one-stop shopping and information. **Tony Herbert** noted that in the current form of the legislation one area needed clarification. The intention of the bill is that the state and the agency in a political subdivision does not become an ISP. In part three, it says do not dispense or deliver internet services. Nothing in the bill would prohibit a state agency or a political subdivision from offering electronic government services to the public.

SENATOR DON RYAN wanted to make sure that the bill didn't hinder a university's ability to get information and use technology in their services or add cost to students. **Mr. Herbert** declared that the intent of the bill includes the university system and its units. It doesn't prohibit students at universities from doing what they need to do on the internet. He was unaware of anything the university system does that would be in conflict with what the bill does.

SENATOR MIKE HALLIGAN inferred about the word "dispensing" on page 2, line 6 and wondered what is done to dispense internet service. **SENATOR DOHERTY** proclaimed that the language in section 3 talking about access to the internet to the general public meant anybody, although someone in or affiliated with the university system isn't really the general public. **Bill Squires** mentioned that the key is internet services and that the intent of the bill isn't to prohibit things such as research and development of those services. The internet started as a government and educational joint venture. From the industry standpoint, the intent is not to discourage that sort of further development. **Fred Weber** addressed the dispensing issue by telling about Dartmouth University. They are a wonderful software developing school and they have developed many programs to train students, provide education, and provide the public with needed software. Therefore, when finished developing a product, they had something to dispense. In addition, students made great products and retained the rights to those products after graduation, formed a small software company to dispense those products, and sold them through a little limited liability partnership. The idea of the bill is the government competing

with a private ISP and if the general public can call up the government to get the same product they could get from a private enterprise.

SENATOR STAPLETON wondered whether the sponsor supported the amendments. **SENATOR DOHERTY** wanted to review the amendments more closely before making a decision.

SENATOR ZOOK was confused with the word dispensing.

SENATOR TAYLOR asked how to get money out of private and public entities for high speed internet service. **John Fitzpatrick** stated that the bill is fine as written. In rural communities there is an extensive amount of internet infrastructure. It is companies like those represented by the Montana Telephone Association and Montana Independent Telephone Systems which have been providing high speed connections in rural Montana.

Closing by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 14}

SENATOR DOHERTY declared that he would work with different individuals and amendments to make the bill even better. It was not his intent to mess up the ability to do distance learning or anything with regard to delivery of health care in rural areas.

HEARING ON HB 84

Sponsor: REPRESENTATIVE TRUDI SCHMIDT, HD 42, Great Falls

Proponents: Connie Cramer-Caouette, Ladies Professional Golf Assn.
Ed Eaton, AARP

Opponents: John Fitzpatrick, Touch America

Opening Statement by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 17}

SENATOR MIKE HALLIGAN, SD 34, Missoula, opened on HB 84 for **REPRESENTATIVE TRUDI SCHMIDT**. He cited that the bill attempts to provide some ability to the Department of Commerce to work with the entities involved whose turf is being violated or who have the right to do certain things under the various telecommunications acts that are passed.

Proponents' Testimony:

Connie Cramer-Caouette, Ladies Professional Golf Assn., relayed a personal story of several harassing phone calls. She was unable to gather any information on who was calling her and was anxious to find a remedy for the problem.

Ed Eaton, AARP, voiced his support of the legislation.

Opponents' Testimony:

John Fitzpatrick, Touch America, declared that telemarketing has become so advanced that it is now a computerized system where five phone numbers are dialed at once. The first person to answer gets to speak to the telemarketer while the remaining people get dead lines. However, this bill does not solve that particular problem. There is nothing in this piece of legislation which will stop those sort of calls being made to any citizen. This bill doesn't significantly improve the Telecommunications Fraud Act. He mentioned lines 21-22 on page 3 of the bill and believed the language has potential for problems in the future. The Department of Commerce already has the right to subpoena any kind of information they want from a telecommunications provider. This language may be a tool or an invitation to use that subpoena in negative ways. The law is interpreted by people and people's opinions change.

Informational Testimony:

Annie Bartos, Department of Commerce, was available for any questions, comments, or concerns from the committee members.

Questions from Committee Members and Responses:

{Tape : 2; Side : A; Approx. Time Counter : 1}

SENATOR HALLIGAN asked for a discussion of the issues raised by **Mr. Fitzpatrick** with respect to his concerns. **REPRESENTATIVE SCHMIDT** noted that the amendment was put in at the request of the telephone companies and they said that they were then neutral on the bill. This bill is really one small step in helping to alleviate the problem with telemarketers and citizens.

SENATOR HALLIGAN questioned what sort of federal law or Public Service Commission (PSC) regulation would keep the Department of Commerce from harassing telephone companies. **Annie Bartos** replied that the utilities are governed by the PSC, but didn't have specific statutes or regulations.

REPRESENTATIVE DICK HAINES, HD 63, relayed a personal story including his father.

SENATOR BEA MCCARTHY noted that for the last two sessions, legislators have dealt with telemarketing fraud. She wanted to know how successful the changes made in 1999 were and whether the new change would be an improvement. **Ms. Bartos** clarified that the law which was passed in 1999 certainly provided a big step in the protection of Montana consumers. The telemarketing fraud unit in their department was up and operating by October 1 of when the law came into effect. They had recovered nearly \$200,000 of Montana consumers money in terms of obtaining refunds or restitution from telemarketers who may have violated the law. In the area of consumer education, the department has reached out to senior citizens, high school students, civic organizations, and others to educate them about telemarketing fraud and the way in which it can be prevented. In terms of the second question, the ability for the department to work with a local exchange company or a local telephone cooperative would be beneficial.

SENATOR MCCARTHY insisted that it seemed like it was necessary to go out of state to get the restitution and the solution to the problem. She couldn't see any difference in the current status and what was being asked for in the bill. **Ms. Bartos** declared again that no difficulties had resulted in working with the telephone cooperatives or those entities. The department has worked with other agencies such as the Federal Trade Commission and Canadian authorities.

SENATOR TAYLOR wanted to know how to solve the problem addressed. **Mr. Fitzpatrick** commented that there are both good and bad telemarketers. The Department of Commerce isn't having problems with telecommunications companies. This legislation simply doesn't get the job done. He didn't know how to solve problems which are interstate in nature. **SENATOR TAYLOR** was curious if this is a federal issue. **Mr. Fitzpatrick** believed it was a combination of state and federal jurisdiction. The Department of Commerce has a limited ability to prosecute across state lines.

SENATOR HALLIGAN noted that since the telephone association took a neutral stance and given the language inserted by the House committee, there are some parameters which have to be given. **Mr. Fitzpatrick** replied that the amended language has helped, but didn't agree completely. The amendments drafted by Qwest do help, but he was still concerned about the authority.

Closing by Sponsor:

{Tape : 2; Side : A; Approx. Time Counter : 19}

REPRESENTATIVE SCHMIDT closed by stating that HB 84 is an attempt to protect Montana citizens against telemarketers. With all the current technology, it's amazing that this problem can't be solved. She read some of her constituents comments regarding the issue and encouraged a "do pass" vote from the committee.

EXECUTIVE ACTION ON SB 250

Motion/Vote: **SENATOR TAYLOR** moved that **SB 250 BE TABLED**. Motion carried 6-4 with **Doherty, Halligan, McCarthy, and Ryan** voting no. **SENATOR MCNUTT** was excused.

EXECUTIVE ACTION ON SB 276

Motion: **SENATOR HALLIGAN** moved that **SB 276 DO PASS**.

Substitute Motion: **SENATOR ROYAL JOHNSON** made a substitute motion that **SB 276 BE AMENDED** by striking "supply" from line 18 and by striking lines 22-24.

Discussion:

SENATOR MCCARTHY believed that the PSC had wanted "supply" to be stricken and "utility" to be inserted in line 18.

SENATOR DOHERTY asked to segregate the substitute motion and vote on each separately.

SENATOR JOHNSON withdrew his dual motion.

Substitute Motion/Vote: **SENATOR JOHNSON** made a substitute motion that **SB 276 BE AMENDED** by striking "supply" from line 18 and inserting "utility." **Substitute motion carried 10-0**. **SENATOR MCNUTT** was excused.

Substitute Motion: **SENATOR JOHNSON** made a substitute motion that **SB 276 BE AMENDED** by striking lines 22-24.

Discussion:

SENATOR STAPLETON was curious as to the thought process behind subsection 3.

SENATOR DOHERTY noted that the language says "The Commission may allocate some or all of gain of the proper acquisition transfer of a public utility."

SENATOR JOHNSON withdrew his motion.

Substitute Motion/Vote: **SENATOR JOHNSON** made a substitute motion that **SB 276 BE TABLED**. Substitute motion carried 7-3 with **Doherty, Halligan, and Ryan** voting no. **SENATOR MCNUTT** was excused.

ADJOURNMENT

Adjournment: 5:00 P.M.

SEN. MACK COLE, Chairman

MISTI PILSTER, Secretary

MC/MP

EXHIBIT (ens24aad)